CANADIAN RAILWAY OFFlCE OF ARBITRATION

CASE NO. 444

Heard at Montreal, Tuesday, June llth,1?74

Concerning

CANADIAN NATlONAL RA]LWAY COM?ANY

and

CANADIAN BROTHERHOOD OF RAIIWAY, TRANSPORT AND GENERAL WORKERS

DISPUTE:

The Brotherhood claims that the Company violated Section 5 of a Letter of Understanding dated April 19, 1967 when it scheduled certain assignments at the Concord Express Terminal to commence before 7:30 a.m.

JOINT STATEMENT OF ISSUE:

On April 19, 1967 the parties signed a Letter of Understanding supplemental to a Memorandum of Agreement signed on April 28, 1967 covering the integration of L.C.L. Freight and Express Services at Toronto, Ontario. lnter alia the Letter of Understanding dealt with hours of assignments and the existing public transportation problems.

In June of 1972 the Company gave the Brotherhood a 30 day notice of its intention to cancel the provisions of the Letter of Understanding dated April 19, 1967 With specific reference to the changed circumstances of transportation problems.

Effective September 14, 1973, under the provisions of Agreement 5.1 the Company amended the hours of assignment of four positions of lnbound Marker at the Concord Express Terminal from 0800 to 1600 to become 0700 to 1500. The Brotherhood alleges that this action was in violation of the Letter of Understanding of April 19, 1967. The Company contends that the Letter of Understanding of April 19, 1967 was cancelled in June of 1972 and if no longer applicable and that the change in the hours of assignment of the four Inbound Markers was not in violation of the provisions of Agreement 5.1.

FOR THE EMPLOYEES:	FOR THE COMPANY:
J. A. PELLETIER NATIONAL VICE PRESIDENT	G. H. BLOOMFIELD ASST. VICE PRESIDENT - LABOUR RELATIONS

There appeared on behalf of the Company:

P. A. McDiarmid	System Labour Relations Officer, C.N.R., Montreal

W. W. Wilson — Labour Relations Assistant, C.N.R., Toronto

And on behalf of the Brotherhood:

J. D. Hunter — Regional Vice-President, C.B.R.T., Toronto
J. A. Pelletier — National Vice-President, C.B.R.T., Montreal

AWARD OF THE ARBlTRATOR

Collective Agreement 5.1, signed on August 16, 1971, provides in Article 4 for the matter of hours of work. Article 4.8, in particular, is as follows:

> "4.8 Unless necessary to meet the requirements of the service, employees will not be required to oonmence work between the hours of midnight and 6.00 a.m."

In April, 1967 (during the term of an earlier collective agreement which, it seems, contained the same provision as that set out above as Article 4.8), the parties executed a Memorandum of Agreement with respect to the integration of certain operations at Toronto. As a supplement to that Memorandum, the parties signed a letter of understanding which dealt with a number of matters relating to the integration, including the matter of hours if work at the new facility. In particular, item 5 of the letter of understanding was as follows:

> "5. Notwithstanding the provisions of Article 4.8 of Agreement 5.1 between the parties, no assignment will be scheduled to commence earlier than 7.30 a.m. nor extend beyond 24:00 midnight other than those assignments scheduled to commence at 24:00 midnight. This commitment was made in the light of existing transportation problems attendant to the new express freight facility and is subject to review as circumstances may change in the future."

By that letter, the Company undertook, with respect to the operations in question, not to exercise what would otherwise have been its right to schedule employees to start work at some time before 7:30 a.m., subject only to Article 4.8. For the purposes of this case, I am prepared to assume that the letter imposed a binding obligation in that regard, at least for the remainder of the term of the collective agreement which was then in effect and which might be considered as having been amended by the Memorandum and by the letter of understanding. I am further prepared to assume, for purposes of this case, that such obligations might be enforced under the grievance procedure. Case No. 261 was an example of a grievance based on an alleged violation of such a letter, but the grievance there was dismissed on its merits and the matter of the status of the letter of understanding was not dealt with. lt may be observed that that case was heard before the present collective agreement was signed.

The Company has, during the term of the present agreement, amended the hours of work in a way which is in accordance with the express provision of Article 4.8, but which would not have been in accordance

with the letter of understanding, at least at the time that it was signed. The question is whether the amendment of hours of work effected on September 14, 1973 was in violation of any provision enforceable through the grievance and arbitration procedure.

In some cases a letter of understanding may well be considered to have become an integral part of a collective agreement, as in the case of Brotherhood of Locomotive Engineers and C.N.R., 15 L.A.C. 126. Such a letter does not, however, thereby become a part of some other, subsequent collective agreement: see the Canadian Canners case, 14 L.A.C. 50, the Canadian Locomotive Co. case, 14 L.A.C. 105, and the Hobart Manufacturing case, 21 L.A.C. 141, where it was held, apparently unanimously, that "a side agreement or letter of understanding does not continue from collective agreement to collective agreement unless in some way incorporated into or attached to the subsequent collective agreement". That does not appear to have been done with respect to the 1967 letter of understanding and the current collective agreement.

While the Company may have continued in effect under the present collective agreement a schedule of hours which was in conformity both with the collective agreement and with the letter of understanding, it would not appear to have been under any obligation going beyond that of the collective agreement. In any event, the obligation imposed by the letter of understanding was one expressly made "in the light of existing transportation problems attendant to the new express freight facility". Quite apart, then, from the lack of any provision in the collective agreement continuing any provisions of the letter of understanding, the letter itself sets out the contingency of its provisions on certain circumstances which obtained in 1967.

It has not, therefore, been shown that the Company is bound, with respect to the scheduling of hours, by any provisions other than those contain in the collective agreement. The schedule here complained of is not in violation of the provisions of the collective agreement. Accordingly, the grievance must be dismissed.

J. F. W. WEATHERILL
ARBITRATOR